

#105

DECLARATION OF COVENANTS

Late Backup

THIS DECLARATION OF COVENANTS (this "Declaration") is made by Foundation Communities (together with its successors and assigns, the "Project Owner"), and is given by Project Owner to and for the benefit of Greenbriar Neighborhood Association.

WITNESSETH:

WHEREAS, the Project Owner is or may become the owner of real property located at 2501 South Interstate Highway 35, in the City of Austin, County of TRAVIS, State of Texas, more particularly described in Exhibit A hereto (the "Project Land") (the Project Improvements and the Project Land being collectively referred to herein as the "Project");

WHEREAS, the Project Owner has agreed in connection with development requests that the Project land will be subject to certain covenants as more specifically provided herein;

WHEREAS, the Project Owner, under this Declaration, intends, declares and covenants that the covenants set forth herein shall be and are covenants running with the Project Land, are binding upon all subsequent owners and operators of the Project during such Term, and are not merely personal covenants of the Project Owner.

NOW, THEREFORE, in consideration of the premises set forth above, and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Project Owner agrees as follows:

1. The Project Owner intends, declares and covenants, on behalf of itself and all future owners and operators of the Project, that this Declaration and the covenants set forth in this Declaration (i) shall be and are covenants running with the Project Land, encumbering the Project Land for the Term of this Declaration and binding upon the Project Owner's successors in title and all subsequent owners and operators of the Project Land, and (ii) shall bind the Project Owner (and the benefits shall inure to the Neighborhood Group as herein stated and its respective successors and assigns).

2. The Project Owner hereby agrees in favor of the Neighborhood Group as follows in connection with the Project Land:

a. Project Owner will plant Twelve additional trees selected from the City of Austin recommendation list with a mature height minimum of at least 25 feet. At least half of the trees will be evergreen varieties. The trees will be planted on the East side of the property near the upper fence along the existing parking area, and continuing along the Southeast corner retention area. Project Owner will maintain these trees and replace any that do not live.

b. Project Owner will install and maintain two privacy fences. One fence will be eight feet high and follow the length of the East property line. This fence will be of good quality, support posts set in concrete, and provide screening. The second fence will run along the East side (back) of the property on top of the retaining wall and extend around the Southside of the parking area at

4. This Declaration shall be governed by the laws of the State of Texas, and, where applicable, the laws of the United States of America.

5. The Neighborhood Group and/or City shall have the right to enforce, by any proceeding at law

least thirty feet

c. Project Owner will use commercially reasonable steps such as adding an earth berm to the easement area and take all necessary steps to help prevent inordinate drainage into neighboring properties.

d. Project Owner will provide normal repair and maintenance to the water retention and detention ponds to avoid overgrowth and trash retention.

e. Project Owner will maintain a uniform exterior appearance of the Project Land and maintain window screens.

f. The Project Owner will maintain a maximum of 123 residential units.

g. The Project Owner will maintain a maximum of 39.92 residential units per acre.

h. The Project Owner maintains that the prohibited uses are: outdoor entertainment, outdoor sports & recreation, and general retail sales (convenience).

i. The Project Owner will maintain/limit height of any building or structure on the property to at or below 40 feet from ground level.

j. The Project Owner will maintain/limit impervious cover at 60% or less of the overall property.

k. The Project Owner grants owners of adjacent properties the right to install and maintain fencing to a height of Eight foot. In turn, the Greenbriar Neighborhood Association grants the Project Owner the right to install Eight foot high fencing on the Eastern property line.

l. The Project owner will protect the natural area on the Southside of the property as shown on exhibit B, to remain undeveloped and be maintained by clearance of brush, weed, and debris at a minimum of once every 3 years from the effective date of this contract.

All fencing, landscaping and drainage requirements must be completed within 6 months from the date of the first lease or of any occupant on the property.

3. This Agreement may not be amended or modified except by written instrument signed by Project Owner and approved by the Neighborhood Group, or their respective heirs, successors or assigns, which instrument shall not be effective until it is recorded in the real property records in the county where the Property is located.

4. This Declaration shall be governed by the laws of the State of Texas, and, where applicable, the laws of the United States of America.

5. The Neighborhood Group and/or City shall have the right to enforce, by any proceeding at law or in equity, all covenants imposed by the provisions of this Declaration made in favor of such

entity.

6. Invalidation of any of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions, which shall remain in full force and effect.

7. The covenants and restrictions of this declaration shall run with and bind the land, for a term of Ninety-Nine (99) years for the date this Declaration is recorded.

8. This Agreement is binding on Project Owner only in the event (i) Project Owner actually purchases the Project Land, (ii) the existing zoning case is approved by the City of Austin, and (iii) ~~the Greenbriar Neighborhood Association does not object to or otherwise challenge the zoning case.~~

9. Any disputes that may arise under this covenant will be submitted to mediation in an attempt to resolve them prior to filing a lawsuit.

BY:  
NAME:  
TITLE:

BY:  
NAME:  
TITLE:

STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by \_\_\_\_\_ of \_\_\_\_\_ on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas